

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on

Delivered on

04.12.2018

21.12.2018

%Dated: 21.12.2018

*CORAM

THE HON-BLE MR.JUSTICE K.K.SASIDHARAN

and

THE HON-BLE MR.JUSTICE P.D.AUDIKESSAVALU

+W.A.(MD)Nos.1018 of 2018

and 1267 of 2018

and

C.M.P.[MD]Nos.7142 and 8845 of 2018

W.A.[MD]No.1018 of 2018

#1.A.R.Sasikumar

2.R.M.Yuvaraja

3.S.Sundareswari

4.D.Muthuvelu

5.P.Latha

6.R.Lakshmi

7.N.Poongani

8.A.Amutha

9.Tmt.M.Valarmathi

10.S.Sekar

11.K.M.Jeyaraman

12.K.Ilangovan

13.N.Usharani

14.Tmt.A.G.Anbuselvi

15.M.Selvam

16.Tmt.M.Uma Meenakshi

17.S.Ramesh

18.S.Mareeswaran

19.Tmt.D.Princy Prathiba Sagaya Rani

20.K.Muthukumar

21.K.Chellamuthu

22.K.Poomgulali

23.P.Prabhakaran

: Appellants

Vs.

\$1.S.Arivuchutar

2.K.Ramanathan

3.C.Rajasekaran

4.P.Rajaji

5.I.Bharathi

6.G.Muthuramalingam

7.G.Mariappan

8.R.Balaji

9.V.Ganesh

10.P.Nagendramurugan

11.G.Balasubramanian
12.I.Kamarudeen
13.V.Banupriya
14.K.Malaichamy
15.M.Vinothkumar
16.The Principal Secretary/
The Commissioner of Revenue Administration,
Chepauk, Chennai ~ 600 006.
17.The District Collector,
Sivagangai District, Sivagangai.

18.The District Revenue Officer,
Sivagangai District, Sivagangai.
19.P.Umamaheswari
20.N.Sundari
21.G.Balakrishnan
22.M.Thedaselvi
23.S.Jegadeesan
: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 05.07.2018, in W.P.(MD)No.2441 of 2018.

!For Appellants : Mr.G.Prabhu Rajadurai
^For Respondents 1to15 : Mr.Veera.Kathiravan,
Senior Counsel,
For Mr.C.Gangai Amaran
For Respondents 16to18 : Mr.VR.Shanmuganathan,
Special Government Pleader

W.A.[MD]No.1267 of 2018
1.The Principal Secretary/
Commissioner of Revenue Administration,
Chennai.

2.The District Collector,
Sivaganga.

3.The District Revenue Officer,
Sivaganga. : Appellants
Vs.

1.S.Arivuchutar
2.K.Ramanathan
3.C.Rajasekaran
4.P.Rajaji
5.I.Bharathi
6.G.Muthuramalingam
7.G.Mariappan
8.R.Balaji
9.V.Ganesh

10.P.Nagendramurugan
11.G.Balasubramanian
12.I.Kamarudeen
13.V.Banupriya
14.K.Malaichamy
15.M.Vinothkumar : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order of Writ Court dated 05.07.2018, in W.P.(MD)No.2441 of 2018.

For Appellants : Mr.VR.Shanmuganathan,
Special Government Pleader
For Caveator/s : Mr.G.Prabhu Rajadurai

:COMMON JUDGMENT

K.K.SASIDHARAN, J.

The intra~Court appeals are directed against the common order dated 05 July, 2018 in W.P.(MD)No.2441 of 2018, whereby and whereunder, while negating the contention taken on behalf of the writ petitioners with respect to the validity of the promotion panel dated 22 September, 2017, the learned Single Judge, ultimately, quashed the very panel dated 22 September, 2017 on the ground that the promotions were given in excess of the total cadre strength. Feeling aggrieved, the beneficiaries of the promotion panel dated 22 September, 2017 along with the State are before this Court.

2. The parties are hereinafter called as -the writ petitioners and the respondents-, taking into account their respective status before the Writ Court.

3. The writ petitioners filed the Writ Petitions challenging the promotion panel dated 22 September, 2017, on the ground that promotions were given in excess of the actual vacancies, thereby curtailing their chances of promotion for the years to come.

4. Before the Writ Court, the writ petitioners contended that there was non~adherence to the communal roster while preparing the promotion panel. It was further contended that as against the cadre strength of 63, 42 employees were already working and, therefore, only 21 posts were available for giving promotion. There were four reserved category candidates available and as such, the remaining vacancies for regular promotion was 17. However, promotions were given more than the actual vacancies.

5. The respondents before the learned Single Judge contended that the vacancies were arrived at, taking into account all the parameters. There were 44 posts available for giving promotion to the post of Deputy Tahsildar.

6. The learned Single Judge agreed with the submission made on behalf of the respondents that even if the promotion panel is set aside, still the writ petitioners would not be included in the panel, as they were not eligible. The learned Single Judge observed that the writ petitioners cannot

be characterized as -aggrieved- on account of the preparation of the panel dated 22 September, 2017. The learned Single Judge upheld the panel dated 22 September, 2017, for the post of Deputy Tahsildar, in the district of Sivagangai. Thereafter, the learned Single Judge considered the question as to whether promotions were made in excess of the actual vacancies in the post of Deputy Tahsildar. The learned Single Judge quashed the impugned order dated 22 September, 2017 in part on the ground of excess promotion.

7. The learned counsel for the private respondents in the Writ Petitions, who are the appellants in W.A.(MD)No.1018 of 2018, contended that the learned Single Judge was not correct in considering the validity of the panel, after arriving at a conclusion that the panel was rightly prepared and the challenge at the instance of the direct recruitees was legally not sustainable. According to the learned counsel, the writ petitioners have no right to challenge the panel, as they were not entitled to be included in the panel prepared on 22 September, 2017. The learned counsel, by placing reliance on the proviso to Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, contended that the learned Single Judge omitted to consider the proviso regarding carry forward vacancies and the same resulted in quashing the panel in part.

8. The learned Special Government Pleader contended that the promotions were made strictly in accordance with the rules in force. The actual permanent vacancies and the temporary vacancies were clubbed together and promotions were given to the eligible candidates. The learned Special Government Pleader submitted that two employees were promoted in excess of the actual vacancies and except to that extent, the panel is valid.

9. The learned Senior Counsel for the writ petitioners supported the order passed by the learned Single Judge. According to the learned Senior Counsel, by preparing a panel by including certain posts which were not actually vacant, the administration denied the writ petitioners- a chance to seek promotion. The learned Senior Counsel contended that even though the writ petitioners were not entitled to promotion at that point of time, their right to seek promotion at a later point of time was denied, on account of filling up the entire posts in a highly arbitrary manner.

10. The only question that arises for consideration is as to whether the Government was correct in preparing the panel for the year 2017, taking into account the total vacancies in the post of Deputy Tahsildar as 63.

11. The crucial date for preparation of the panel for promotion was 15 September, 2017. The District Collector, Sivagangai, prepared the panel, taking into account the vacancy in the post of Deputy Tahsildar for the period from 15 September, 2017 to 14 September, 2018. The panel for the year 2016 contains an indication that 15 posts were carry forward vacancies meant for SC/ST candidates. The carry forward vacancies have not been filled up for want of candidates from the SC/ST community. The District Collector included the names of four SC/ST candidates, while preparing the panel for the year 2017.

12. The second proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, reads thus:

□Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty per cent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject to the condition that the vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the earliest carried forward vacancies shall be made first.□

13. The effect of the second proviso appears to have been not considered by the learned Single Judge, while quashing the panel in part.

14. The affidavit filed by the Principal Secretary and Commissioner of Revenue Administration indicates that there were 23 permanent posts and 40 temporary posts of Deputy Tahsildar as on the crucial date.

15. The State as well as the writ petitioners made an attempt before the learned Single Judge to project as if it was a temporary promotion. We reject the contention taken by the State that it was a temporary promotion within the meaning of Section 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It was not the case of the State at any point of time earlier that it was a temporary appointment to meet the exigency in service. We, therefore, reject the contention based on Section 17 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

16. The panel prepared by the District Collector contains more posts than the posts actually available for giving promotion to the post of Deputy Tahsildar. The learned Single Judge arrived at a conclusion that there were only 21 posts of Deputy Tahsildar available for promotion. There appears to be a calculation mistake in respect of the total posts available. The calculation made by the District Collector appears to be incorrect. Similar is the calculation made by the learned Single Judge with respect to the Deputy Tahsildars already working and the vacancies as on the cut~off date.

17. The writ petitioners as well as the State made an appeal to determine the actual posts available as on the cut~off date without disturbing the appointments already made by way of promotion.

18. The panel was prepared on 22 September, 2017. The promotees took charge immediately and they have been working throughout. In view of the background facts, we are of the view that the matter requires fresh consideration by the District Collector without disturbing the Deputy Tahsildars, who are working now, pursuant to the order dated 22 September, 2017.

19. The District Collector must arrive at a conclusion with respect to the actual vacancy as on 15 September, 2017. While preparing the panel, the District Collector must scrupulously follow Section 27 of the Tamil Nadu

Government Servants (Conditions of Service) Act, 2016, including its provisos. The writ petitioners and the successful candidates must also be given an opportunity to submit their views with respect to the actual vacancies available as on 15 September, 2017. The panel should be prepared, taking into account the vacancies to be arrived at, in accordance with Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Such exercise shall be completed, within a period of four months from the date of receipt of a copy of this judgment. The status quo with respect to the appointment of the promoted candidates would continue till a decision is taken afresh by the District Collector.

20. The intra~Court appeals are disposed of with the above direction to prepare the panel afresh. No costs. Consequently, the connected miscellaneous petitions are closed.

To

1.The Principal Secretary/
The Commissioner of Revenue Administration,
Chepauk, Chennai ~ 600 006.

2.The District Collector,
Sivagangai District, Sivagangai.

3.The District Revenue Officer,
Sivagangai District, Sivagangai.